

South Davis Community Hospital and its workers compensation insurance carrier, Wasatch Crest Mutual Ins. Co. (jointly referred to as "South Davis") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to S. M. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **BACKGROUND AND ISSUE PRESENTED**

On October 16, 2001, Ms. M. filed an Application For Hearing with the Labor Commission to compel South Davis to pay workers' compensation benefits for a low back injury Ms. M. suffered while working for South Davis on January 1, 2001. Judge La Jeunesse conducted an evidentiary hearing on Ms. M.'s claim on May 23, 2002, then referred the medical aspects of the claim to an impartial panel of medical experts. The panel issued its report on February 28, 2003. Judge La Jeunesse then issued his decision on September 2, 2003. Based on the medical panel's report and the opinions of other physicians, Judge La Jeunesse concluded that Ms. M.'s work-related injury had caused a period of temporary total disability and had necessitated medical care. Judge La Jeunesse ordered South Davis to pay temporary total disability compensation and medical expenses accordingly.

South Davis now seeks review of Judge La Jeunesse's decision. Specifically, South Davis contends that Ms. M.'s period of temporary disability was not caused by her work-related injury. South Davis also contends that Ms. M. is not entitled to temporary disability compensation because light duty work within her capabilities was available to her.

### **FINDINGS OF FACT**

The Appeals Board adopts the findings of fact set forth in Judge La Jeunesse's decision. In summary, Ms. M. was employed as a licensed practical nurse by South Davis. While lifting a patient at work on January 1, 2001, she experienced low back pain. She sought medical treatment and was diagnosed with acute back strain. She continued working until July 9, 2001, but experienced increasing back pain radiating down her legs.

On July 19, 2001, Ms. M. underwent an MRI scan of her lumbar spine that disclosed a tumor at the L1 level. The tumor was asymptomatic and was neither caused nor aggravated by Ms. M.'s work. On July 31, 2001, the tumor was surgically removed. Ms. M. reached medical stability from the surgery on September 19, 2001.

The MRI Ms. M. underwent on July 19, 2001, also revealed degenerative disc disease with central disc protrusion at the L5-S1 level of Ms. M.'s spine. Her work as South Davis did contribute to the development of this disc disease and Ms. M.'s back strain. Ms. M. did not reach medical stability from these problems until January 9, 2002.

During July, 2001, South Davis offered light duty work to Ms. M.. However, during that time and later, Ms. M. was receiving conflicting medical opinions regarding her ability to accept light duty work. Some of Ms. M.'s physicians advised her that she could return to light duty work during July and August, 2001. However, these opinions were expressed before Ms. M. had undergone the MRI of July 19, 2001, which disclosed both her tumor and her degenerative disc disease. On the other hand, on October 1, 2001, after the MRI and Ms. M.'s surgery, Dr. Walker concluded that Ms. M. was unable to engage in any substantial activity.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Section 34A-2-401 of the Act requires employers and their insurance carriers to pay workers' compensation benefits to employees injured in work-related accidents. South Davis concedes that Ms. M. suffered an accidental work-related low back injury on January 1, 2001. However, South Davis contests Ms. M.'s right to receive temporary total disability compensation for that injury.

South Davis's first argument against Ms. M.'s right to temporary total disability compensation is that her inability to work was not caused by her work-related spinal problems, but was caused instead by the spinal tumor that was unrelated to her work. In making this argument, South Davis relies primarily on the opinion of its own consulting physician and ignores the opinion of the impartial medical panel. The Appeals Board agrees with Judge La Jeunesse that the preponderance of medical evidence establishes that Ms. M.'s disability after September 19, 2001, was caused by her work-related low back injury.

South Davis's second argument regarding Ms. M.'s right to temporary total disability compensation is that she is not entitled to such compensation because South Davis offered suitable light duty work to her. The Appeals Board notes that Ms. M. received different opinions regarding her ability to return to work. However, Dr. Walker is the only physician whose opinion took into account the results of the MRI of July 19, 2001, and the ensuing surgery of July 31, 2001. It was Dr. Walker's opinion that Ms. M. could not return to work. The Appeals Board agrees with Judge La Jeunesse that under these circumstances, Ms. M. was entitled to rely upon Dr. Walker's opinion and to decline South Davis's offer of light duty work.

In summary, the Appeals Board agrees with Judge La Jeunesse's determination that Ms. M. was unable to work as a result of her accident at South Davis from September 19, 2001, until January 9, 2002, and is entitled to temporary total disability for that period of time.

### **ORDER**

The Appeals Board affirms Judge La Jeunesse's decision and denies South Davis's motion for review. It is so ordered.

Dated this 5<sup>th</sup> day of April, 2004.

Colleen S. Colton, Chair  
Patricia S. Drawe  
Joseph E. Hatch

